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JUN 29 1962
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962
No. 226

THE DREDGE CORPORATION, a Nevada corporation,
Petitioner,

vs.

HUSITE COMPANY, a Nevada corporation,
Respondent.

Petition for Writ of Certiorari to the Supreme Court of the State of Nevada.

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Petition for Writ of Certiorari to the Supreme Court of the State of Nevada.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Nevada entered in the above case on February 28, 1962.

Opinions Below.

The opinion of the Eighth Judicial District Court of the State of Nevada is unreported.

The opinion of the Supreme Court of the State of Nevada is not yet officially reported, but is unofficially reported in 369 P. 2d 676.

Jurisdiction.

The judgment of the Supreme Court of the State of Nevada was made and entered on February 28, 1962. A copy thereof is appended to the petition in the Appendix at pages 8-31. The Petition of the Dredge Corporation for a rehearing was denied on April 2, 1962. The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3).

Statutes, Federal Rules and Regulations Involved.

The pertinent portions of Article V of Amendments to the Constitution of the United States, The Taylor Grazing Act, 43 U. S. C., Ch. 8A, §315g and 315e; the Administrative Procedure Act of the United States, 5 U. S. C., Ch. 19, §1001, *et seq.*; 30 U. S. C., §21 *et seq.*, are set forth in the Appendix at pages 1-7.

Questions Presented.

This is a case of first impression in the Supreme Court of the United States with respect to the rights of adverse claimants to federally owned land under two separate federal statutes. The petitioner is claiming title by virtue of the mining laws of the United States (30 U. S. C.); Husite is asserting its title under patents issued under the Taylor Grazing Act, 43 U. S. C. §315g.

Petitioner filed its complaint in the Nevada State Court to quiet title to eight unpatented association placer mining claims. Husite counterclaimed to quiet its title to the same land by virtue of its patents from the United States.

Both parties moved for summary judgment based on the pleadings and affidavits on file. The trial

court denied the petitioner's motion and granted the motion of Husite declaring that the failure of the petitioner to protest during the period of publication of the application for an exchange of land filed by Husite under the Taylor Grazing Act with knowledge of the same was fatal to its cause.

The trial court did not feel that an issue was created by certain facts raised in the affidavit by which an estoppel was attempted to be asserted against Husite concerning promises to respect and protect the rights of petitioner in the land now claimed by both parties.

The Supreme Court of the State of Nevada affirmed, basing its decision on the ground that no valid mining rights existed in the petitioner. It was *assumed*, with no evidence in or out of the record, that the Bureau of Land Management had made an examination of the land on which the placer mining claims existed and that the land was determined to be non-mineral. Having thus *assumed* away the mineral character of the land, the court upheld Husite's title under its patents and divested Petitioner's vested right in the land. It is a matter of public record in the United States Bureau of Land Management that there was no determination respecting the validity of Petitioner's rights in the placer mining claims. The Supreme Court of the State of Nevada refused to take judicial recognition of such public record.

The court held further that Dredge's claimed violation of procedural due process is without merit on the ground that Dredge's mining locations were subsequent in point of time to the filing of respondent's application for exchange under the Taylor Grazing Act (but prior to publication of the Husite application).